IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2987 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MILAN JAYANTILAL JAYSWAL(KALAL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 13.2.2004. By

the impugned order, the petitioner-detenu is detained as a 'bootlegger', under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenu was also served with the grounds of detention. In the grounds of detention, there is a reference about three registered cases against the petitioner. All these cases are filed against the petitioner under the Bombay Prohibition Act. It is alleged that the petitioner is dealing in foreign liquor. After considering the said cases and after considering the statements of two secret witnesses, whose names have not been disclosed to the petitioner, the petitioner has been detained as a 'bootlegger' under PASA. It is the aforesaid order which is impugned in this petition.

The learned Advocate for the petitioner submitted that, at the relevant time, the petitioner was already in judicial custody in connection with cases at serial Nos. 1 and 3 and regarding the case at serial No.2, it was found that he was not arrested as he was absconding. Still, the detaining authority passed the detention order on the ground that the petitioner will be released on submitting a bail application. It is submitted on behalf of the petitioner that without any cogent materials before the officer passing the detention order that the detenu is likely to be released on bail, the detention order is passed. In this connection, the learned Advocate for the petitioner has cited the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675, to substantiate his say that the inference must be drawn from the available material on record. In the said decision, the Apex Court held as under :-

" ... ...

4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference

must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... ..."

Since the authority has not stated in the order as to on what basis it has reached the subjective satisfaction that on presenting the application for bail, the petitioner will be released on bail, it can be said that the subjective satisfaction is vitiated and on that ground, the petition is required to be allowed.

If the petitioner is a habitual offender, it is for the State to oppose the bail application on its own merits. Even the remedy of cancellation of bail of the petitioner is available for the State. However, it is for the State to consider the same as per law.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered

that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

9th August, 2004. (P.B. Majmudar, J.)

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(apj)